

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 27, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROBERT JESSE HILL,

Plaintiff,

v.

TODD WISE, JON COERS, AARON
KERSHAW, SGT. WALKER, C.U.S.
ANN ADAMS, SGT. PARSONS, TRACY
BULL, OFFICER BITTERMAN, SGT. R.
CURRY, ALFREDO LOMELI, STEVEN
SUNDBERG, JR., ROBERT JACKSON,
II, SGT. PATRICK MCPHERSON,
OFFICER COTTOM, OFFICER
SEVERSON, OFFICER ELLIOTT,
OFFICER COLTON NORDYKE, DEAN
MASON, MICHAEL DOUGLAS,
DONALD HOLBROOKE, JR., CHERYL
STRANGE, OFFICER CLARISSA
RODRIGUES, TRACY SCHNEIDER,
JANET NELSON, SGT. R. CROWELL,

2:23-cv-05143-SAB

**ORDER DENYING LEAVE TO
PROCEED *IN FORMA*
PAUPERIS AND DISMISSING
ACTION**

ORDER DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS* AND
DISMISSING ACTION -- 1

1 TONY DUNNINGTON, and JEFFERY
2 ALFRED UTTECHT,
3
4 Defendants.
5

6 By Order filed November 29, 2023, the Court directed Plaintiff, a *pro se*
7 prisoner at the Washington State Penitentiary, to show cause why his application to
8 proceed *in forma pauperis* should be granted, ECF No. 10. In the alternative,
9 Plaintiff was instructed that he could pay the \$402.00 fee (\$350.00 statutory filing
10 fee, plus \$52.00 administrative fee) to commence this action under 28 U.S.C. §
11 1914.

12 In response, Plaintiff filed a second supplemental affidavit in support of his
13 Motion for Temporary Restraining Order, ECF No. 11, and a “Request for Judicial
14 Notice,” ECF No. 12. Plaintiff complains that Defendant Wise threatened to
15 confiscate Plaintiff’s legal papers on November 13, 2023, if those papers were not
16 properly labeled. ECF No. 11 at 1. Plaintiff contends that this is selective
17 enforcement of a DOC policy. *Id.*

18 Plaintiff also asks this Court to take judicial notice that he filed two “Notices
19 of Non-Frivolousness” in two Western District cases previously cited by this
20 Court, and that two orders from the Ninth Circuit show “non-frivolousness.” ECF
21 No. 12 at 1.

22 As previously noted by the Court, the accumulation of three prior qualifying
23 dismissals under § 1915(g) precludes a prisoner from filing an additional suit *in*
24 *forma pauperis*, even while his appeal of the dismissal is pending. *See Coleman v.*
25 *Tollefson*, 575 U.S. 532, 541 (2015). Plaintiff does not dispute that district courts
26 have dismissed three or more of his cases on the grounds enumerated in 28 U.S.C.
27 § 1915(g), regardless of his subsequent appellate activity. *See Hill v. Fisch et al.*,
28 No. 3:22-cv-05320-RSM (W.D. Wash. June 14, 2022) (Order adopting Report and

1 Recommendation to dismiss complaint with prejudice as untimely and for failure
2 to state a claim for relief and without leave to amend) (Appeal No. 22-35823
3 reinstated and pending – consolidated with Appeal No. 22-35822); *Hill v. Garrison*
4 *et al.*, No. 3:22-cv-05451-RSM (W.D. Wash. Sept. 7, 2022) (Order adopting
5 Report and Recommendation to dismiss complaint with prejudice as untimely and
6 without leave to amend) (Appeal No. 22-35822 pending); *Hill v. Nichols et al.*, No.
7 2:23-cv-00011-SAB (E.D. Wash. Aug. 29, 2023)(dismissed with prejudice as
8 frivolous and for failure to state a claim upon which relief may be granted)(Appeal
9 No. 23-3203 pending). Plaintiff does not dispute that a dismissal based upon
10 statute of limitations constitutes a “strike.” *See Belanus v. Clark*, 796 F.3d 1021,
11 1023 (9th Cir. 2015).

12 After careful review of Plaintiff’s submissions, the Court finds that Plaintiff
13 has failed to demonstrate that he was under imminent danger of serious physical
14 injury when he initiated this case and is thus precluded under 28 U.S.C. § 1915(g)
15 from proceeding in this action without prepayment of the filing fee. *See O’Neal v.*
16 *Price*, 531 F.3d 1146, 1153 (9th Cir. 2008). Liberally construing Plaintiff’s
17 assertions in the light most favorable to him, the Court finds that he was failed to
18 overcome the preclusive effects of 28 U.S.C. § 1915(g). *See Andrews v. Cervantes*,
19 493 F.3d 1047, 1055-56 (9th Cir. 2007) (discussing imminent danger exception to
20 three-strikes rule).

21 Because Plaintiff did not avail himself of the opportunity to pay the \$402.00
22 filing fee, he may not proceed with this action.

23 Therefore, **IT IS HEREBY ORDERED:**

24 1. Plaintiff’s applications to proceed *in forma pauperis*, ECF Nos. 2 and
25 5, are **DENIED**.

26 2. This action is **DISMISSED** for failure to comply with the filing fee
27 requirements of 28 U.S.C. § 1914.

28 3. All pending motions are **DENIED as moot** and all hearings and

ORDER DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS* AND
DISMISSING ACTION -- 3

1 deadlines shall be terminated.

2 4. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal
3 of this Order would not be taken in good faith.

4 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
5 enter judgment, provide copies to Plaintiff, and **CLOSE** the file.

6 **DATED** this 27th day of December 2023.



11 

12 Stanley A. Bastian
13 Chief United States District Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28